

## **Chapter Two – Alternatives**

This chapter describes the three alternatives considered in the proposed plan. The alternatives were developed as a result of public input and BLM's legal obligations. BLM's preferred alternative is Alternative One. The alternatives present BLM managers with a reasonable range of options to consider.

Alternative One would transfer the lands to other Federal, state, or local government agencies, individuals or non-profit groups; Alternative Two would be the "no action" alternative required by NEPA; Alternative Three would retain the lands under BLM's jurisdiction and assumes an active management program.

As a result of the site-specific analyses, any one of the alternatives may be chosen. Certain exceptions could apply, as identified in Table 2, "Viability of Each Alternative by Parcel".

### **Description of Alternatives**

#### **ALTERNATIVE ONE – TRANSFER FROM BLM ADMINISTRATION**

Under this alternative, BLM would lease or transfer out of its administration all of the affected parcels (see legal descriptions in Appendix 2). The method by which individual tracts would be transferred would depend on existing land status and natural resource protection goals for a particular parcel. The precise impacts will be analyzed in site-specific environmental assessments that will be prepared for each parcel. The general impacts will be outlined in Chapter Four — Environmental Consequences.

#### **Lighthouses**

Alternative One would allow BLM to consider any method of transfer except FLPMA Sec. 203 sales. BLM could issue leases to the State or local governments, not-for-profit groups to manage the lighthouses and surrounding lands. BLM would remain as the landowner. Leases could be revoked in the event of non-compliance with the terms of the R+PP development plan.

If the properties are leased or patented under the R+PP Act or withdrawn for another Federal agency, they could be managed cooperatively with historic preservation groups under licenses issued by the new land manager. Roles and responsibilities for each party will be delineated in the R+PP development plan or the reports required of withdrawal applicants in accordance with 43 CFR 2310 et seq., as applicable.

#### **Upland Tracts**

These tracts could be transferred to other non-Federal governmental entities or not-for-profit groups under the R+PP Act, to another Federal agency through withdrawal or sold to private individuals. The tracts would have to have legal access to be transferred to any individual or

entity. No preference would be given to adjacent landowners, although the tracts with no legal access could not be sold to other individuals or governmental or non-governmental entities.

BLM may use the exchange provision in FLPMA (Sec. 206) if it would enhance opportunities for resource protection, reduce fragmented land ownership patterns or further improve the goals and objectives of the plans and policies of Federal, State or local governments.

Class 1 color-of-title act claims, which are considered non-discretionary actions, are not affected by the proposed plan. These parcels will be adjudicated, and sold if the claimants meet all procedural requirements of the act. BLM has the discretion to reject Class II color of title claims to protect natural or cultural resources. These lands could be made available to other governmental or non-governmental entities under the R+PP Act. Federal agencies may apply for the lands through the withdrawal provisions of FLPMA, Sec. 204.

The merits of public sales to any applicant will be made on a case-by-case basis. The decision to sell the property is fully discretionary on the part of BLM and no equity is implied by considering sales to rejected COT claimants.

## ALTERNATIVE TWO – NO ACTION

The Council on Environmental Quality (CEQ) regulations require that Federal agencies consider an alternative in which the status quo is maintained. Under the no action alternative, the properties would remain under BLM jurisdiction and receive custodial management, which is defined as holding the property but not developing active management programs or authorizing significant uses of the land. Examples of uses that could not be considered or approved include special use permits, rights-of-way applications or other temporary use authorizations, except under emergency circumstances.

### **Lighthouses**

The no action alternative assumes that BLM has accepted administrative jurisdiction over the lighthouse properties from the U.S. Coast Guard by publishing public land orders in the Federal Register. (See 43 CFR 2370 et seq. for a description of the revocation/restoration process which determines the suitability of withdrawn public domain for return to management under the public land laws. The suitability determination process is categorically excluded from NEPA. It is assumed that unsuitable properties will be analyzed by the General Services Administration prior to final disposition of the tracts.)

BLM could not undertake an active management program for the lighthouses because it is not authorized to do so under the terms of this alternative. The lighthouses would be closed to the public, the grounds would not be available for camping or day use, and interpretative programs could not be developed and implemented. Emergency repairs to buildings could be approved, but only to protect human health and safety. All current third-party licenses would be canceled.

### **Upland Tracts**

Under this alternative, BLM would provide only minimal attention to the lands. The sites would be posted for no trespassing. BLM could not authorize rights-of-way, camping or day use, or other activities which may affect the resources. BLM would not process class 2 color-of-title claims, which are discretionary actions.

## **ALTERNATIVE THREE – RETAIN/ACTIVE BLM MANAGEMENT**

### **Lighthouses**

BLM would prepare an implementation (activity) plan to describe and analyze the impacts of intensive use of the land. Maintenance and operation of the properties could be performed by BLM or through third-party licenses. Individual project plans and environmental assessments would be prepared for each site to analyze management, budgetary and activity actions that would be required for each of the properties. The public would be invited to participate in the development of the plans.

### **Upland Tracts**

BLM would retain the lands for color-of-title claims that have been rejected for resource protection reasons or those which did not qualify under the act. BLM would develop site-specific activity plans and NEPA analyses for each tract. A management program for each parcel would be developed in accordance with BLM's planning regulations and NEPA. The public will be invited to participate in developing these plans.

Possible uses of the parcels includes camping, open space preservation, access to public water bodies, or other temporary land uses. If appropriate, some of these tracts could support construction of recreational or interpretive facilities. The impacts of these activities would be analyzed in a recreation activity management plan for each site.

## **ALTERNATIVES CONSIDERED BUT ELIMINATED FROM FURTHER ANALYSIS**

### **Public Sale of All Properties**

This alternative was eliminated from consideration because it could result in environmental impacts that could not be mitigated. It would be unlikely that natural and cultural resource values of all the properties could be protected adequately if the lands were to pass into private ownership. Some of the properties are appropriate for public sale and these situations will be analyzed in Chapter Four — Environmental Consequences.

### **Transfer of All Properties to the State of Wisconsin**

This alternative was eliminated because it does not give BLM adequate discretion to manage the Federal land in the public interest as required by Section 102 of FLPMA.

## **Procedures Required to Implement Alternative One**

BLM will adhere to the following statutory procedures before transferring any property:

1. Lands withdrawn for use by the U.S. Coast Guard (USCG) will continue to be under that agency's jurisdiction until BLM conducts site-specific analyses for each parcel and publishes public land orders revoking the withdrawals.
2. BLM will not accept any lands back into the public domain until all hazardous materials are removed or cleaned-up. In accordance with 43 CFR 2374(a), holding agencies must ensure that:

The lands have been decontaminated of all dangerous materials and have been restored to suitable condition or, if it is uneconomical to decontaminate or restore them, the holding agency posts them and installs protective devices and agrees to maintain the notices and devices.

3. BLM will consult with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act of 1973, as amended, and the Wisconsin Department of Natural Resources concerning the presence of State-listed special status species.
4. BLM will consult with the State Historical Society of Wisconsin, affected tribes and others to ensure that historic and cultural resources are protected. Where the State Historic Preservation Officer recommends site assessments for the lighthouse parcels, the lands will remain under the jurisdiction of the USCG until those assessments are completed. This will ensure that BLM can identify, evaluate and consider the nature and scope of any cultural and historic resources prior to committing to the transfer of any properties out of Federal ownership.
5. BLM will consult with all affected towns, counties and state agencies to ensure that BLM's actions will be consistent to the maximum extent practical with these entities' laws, policies, plans and zoning requirements.
6. BLM will retain wetland and riparian areas unless:
  - Federal, State, public and private entities have demonstrated the ability to maintain, restore and protect wetlands on a continuous basis; or
  - Transfer of public lands, minerals, and subsurface estates is mandated by legislation or Presidential order.
7. No utility corridors were identified in the proposed plan because the tracts are isolated. BLM will consider short, low impact rights-of-way on a case-by-case basis (e.g., utility lines to private lands). No designated right-of-way corridors, or avoidance or exclusion areas have been identified in the proposed plan.
8. No lands will be made available for grazing, mineral location or mineral leasing because the tracts are unsuitable or uneconomic to manage for these uses.

9. No lands have been designated as areas of critical environmental concern (ACECs).

## **Procedures Required to Implement Alternatives Two and Three**

In general, implementation of Alternative Two would not require any special procedures, other than for BLM to develop a plan for minimizing threats to human health and safety. Under the no action alternative, BLM could undertake only minimal activities to protect human health and safety but could not approve more active management actions.

Under Alternative Three, BLM would undertake more aggressive management of the properties requiring additional site-specific planning and environmental assessments. Virtually the same studies and consultations as Alternative One would be required, including those required under the Endangered Species Act and National Historic Preservation Act. If Cana Island is retained, BLM would prepare a transportation plan to analyze options for transporting people and goods into and out of the area.

## **Possible Methods of Transfer**

The following section describes the legal authorities available to BLM to transfer the properties. Not all of the authorities apply to each parcel. Consult Table 2 on page 15, 17 for a description of the disposal methods appropriate to each tract.

### *Recreation and Public Purposes (R+PP) Act Transfers*

Transfers made under the R+PP Act (patent or lease) have the following general procedural requirements:

- State, counties and municipalities and non-profit corporations or associations may apply for land for any recreational or public purpose;
- Applicant prepares a management and development plan which describes how the land will be managed. BLM approves or rejects development plan;
- BLM publishes a Notice of Realty Action and classification order in the Federal Register and local newspapers to classify the land as suitable for R+PP lease or sale and to give the public an opportunity to comment on the proposal; and
- BLM approves application and issues patent (or renewable lease). Leases are subject to an annual rental. If a proposal fails to meet BLM's requirements (either regulatory or those set forth in this plan), it can be rejected.

BLM will conduct annual compliance examinations to ensure that the lessee continues to meet the terms of the development plan. Compliance examinations would be conducted every five years on R+PP-patented lands. BLM will notify the patent holder (or lessee for leased lands) of problems in the management of the property and will give the lessee an opportunity to correct the problems. If the defects are not corrected, title will revert to the United States or the lease will be revoked. If a patent holder attempts to sell property acquired under the R+PP Act, title will revert automatically to the United States.

Table 2. Viability of Each Alternative by Parcel.

County/ <i>Parcel Name</i>	Alternative One: Transfer	Alternative Two: (No Action) BLM Custodial Management	Alternative Three: Active BLM Management
<b>Bayfield</b>			
<i>Perry Lake</i>	Y	Y	Y
<i>Lake Osborn</i>	Y	Y	N
<b>Door</b>			
<i>Cana Island</i>	Y	N	Y
<i>Eagle Bluff</i>	Y	N	Y
<i>Pilot Island</i>	Y	N	Y
<i>Plum Island</i>	Y	N	Y
<b>Langlade</b>	Y	Y	N
<b>Oneida</b>	Y	Y	Y
<b>Vilas</b>			
<i>Big Lake</i>	Y	Y	Y
<i>Pickarel Lake</i>	Y	Y	Y
<b>Waupaca</b>	Y	Y	Y

Table 2. Viability of Each Alternative by Parcel.

### *Withdrawals*

The authority to withdraw land from operation under the public land laws is found in FLPMA Sec. 204. The withdrawn lands can be used by other Federal agencies for a period usually not to exceed 20 years. Agencies can apply for extensions to withdrawals prior to the end the withdrawal period.

In applying for withdrawals, Federal agencies must follow the regulations at 43 CFR 2310.1, which require that agencies consult with BLM to determine:

- The need for a withdrawal;
- The extent to which the lands must be segregated; and
- Which, if any, studies, public meetings and negotiations should be scheduled to determine environmental impacts and to inform the public about the proposed withdrawal.

The final action is publication of a public land order in the Federal Register.

### *Federal Land Policy and Management Act (FLPMA) Public Sales*

Public sales are authorized by FLPMA, Sec. 203. BLM would entertain proposals for land sales if the sale would meet the requirements of the disposal criteria found in FLPMA and in the proposed plan. Some parcels may be offered for sale to private groups or individuals if no public sector agency is willing to assume ownership or if there is no legal access to the parcel. The usual reason for public sale is to allow adjacent land owners to purchase land that they were unable to acquire through the Color-of-Title (COT) Act.

BLM will notify the public of tracts available for sale in the Federal Register and in local newspapers. Tracts may be sold either by direct sale or competitive bidding. BLM will prepare an environmental assessment before a decision is made to offer a tract for sale. All applicable reviews and consultations will be conducted prior to sale of the tracts.

### *Color-of-Title (COT) Act Land Sales*

#### History of COT Parcels

Lands conveyed to the newly-created State of Wisconsin in 1848 had to be first surveyed by the Federal government prior to patent. Some tracts were missed in the surveys and did not, in fact, leave Federal ownership. Over the years, these tracts were thought to be patented and have changed owners many times. In recent years, these remnant Federal parcels have been discovered and surveyed by BLM. The present-day occupants of the lands have the opportunity to acquire the tracts from BLM under the COT Act.

#### Procedures under the COT Act

There are two “classes” of claims: Class 1, in which the claimant must prove “good faith and in peaceful adverse possession” for more than 20 years. The land must contain valuable improvements. Class 2, in which the present day owner, [his] ancestors or grantors can prove a claim or color-of-title for the a period commencing no later than January 1, 1901, to the date of application. Class 1 claims will be approved if the claim is proven. That is, the claims are non-discretionary on the part of BLM.

Class 2 claims may be rejected to protect natural or other sensitive resources, or if a claimant cannot meet the procedural requirements of the COT Act. An example of resource protection would be the presence of a threatened or endangered species or a resource eligible for inclusion on the National Register of Historic Places or other cultural resource protected by Federal law. BLM will determine which, if any, resources meet this standard in the site-specific EA prepared for each parcel.

### *Exchanges*

BLM may exchange land with other entities under Sec. 206 of FLPMA. Through exchanges, it may be possible to simultaneously meet the goals of transferring lands out of BLM ownership, protect natural or cultural resources and improve land ownership patterns.